

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

January 3, 2002

**IN RE:**

**PETITION OF COVISTA COMMUNICATIONS, INC. AND  
CAPSULE COMMUNICATIONS, INC. TO PERMIT THE  
TRANSFER OF CONTROL OF CAPSULE  
COMMUNICATIONS, INC.**

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) **DOCKET NO.**  
) **01-00741**  
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**ORDER APPROVING MERGER**

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This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at the regularly scheduled Authority Conference held on September 11, 2001 for consideration of the *Petition* filed by Covista Communications, Inc. ("Covista") and Capsule Communications, Inc. ("Capsule") (the "Petitioners"), pursuant to the provisions of Tenn. Code Ann. § 65-4-112, for approval of a transfer of the authority to provide utility services currently held by Capsule to Covista.

**Requirement of and Standards for Authority Approval**

Under the provisions of Tenn. Code Ann. § 65-4-112, a merger or consolidation of property between regulated public utilities is not valid until approved by the Authority. In addition, under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority or its predecessor, the Tennessee Public Service Commission ("TPSC"), to provide utility service in the state of Tennessee, is a public utility. Since this merger involves two entities defined as public utilities

in Tennessee, Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides the following:

(a) **No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority,** even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

### **The Petition**

The *Petition* was filed on August 24, 2001. The Petitioners request Authority approval of a merger involving Capsule and Covista. According to the *Petition*, Capsule is a publicly-traded Delaware corporation with its principal business office located in Bensalem, Pennsylvania that has been granted authority to provide utility services as a provider of operator services and resold telecommunications services in Tennessee by Order dated October 13, 1995 in TPSC Docket No. 95-03355. The *Petition* further states that Capsule holds licenses issued by the Federal Communications Commission ("FCC") to provide domestic interstate and international telecommunications service. The *Petition* states that Covista is a publicly-traded New Jersey corporation with its principal business office located in Little Falls, New Jersey and is a holding company that provides telecommunications services through its operating subsidiary Covista, Inc., which is authorized to provide resold intrastate interexchange and competitive local exchange services in forty-eight (48) states, including Tennessee, as well as interstate and international telecommunications services as a non-dominant common carrier, pursuant to authority granted by the FCC.

In the *Petition*, Covista and Capsule request that the Authority approve, pursuant to Tenn. Code Ann. § 65-4-112, a merger between Capsule and CCI Acquisitions Corp., a wholly-owned subsidiary of Covista to be created specifically for the purpose of conducting this transaction.

Following the merger, Capsule will be the surviving entity and will be a wholly-owned subsidiary of Covista. Shareholders of Capsule will receive shares of Covista, or cash for fractional shares. After the completion of the transaction, Capsule will be an affiliate of Covista's operating subsidiary, Covista, Inc.<sup>1</sup>

According to the *Petition*, the proposed transaction will not involve a change in the manner in which Capsule's customers receive their telecommunications services. The *Petition* states that the acquisition will be transparent to Capsule's customers in terms of the rates, terms and conditions of services they receive, and Capsule's customers will be notified of the change in ownership of their carrier.

The *Petition* also states that the proposed transaction will benefit consumers because the combined management skills of Covista and Capsule will enable both companies to enhance their competitive positions and improve their ability to compete against established carriers. The *Petition* states that by creating a more effective and multifaceted telecommunications carrier, the proposed transaction will enhance competitive choices for telecommunications customers in the United States, including those in Tennessee.

After consideration of the entire record in this matter, including the *Petition*, the Directors find and conclude as follows:

1. Covista and Capsule, either directly or by and through their subsidiaries named herein, have received certification to provide telecommunications services in Tennessee.

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<sup>1</sup> Although CCI Acquisitions, Corp., the entity with which Capsule will merge, is not itself a public utility as defined in Tenn. Code Ann. § 65-4-101, it is simply an acquisition instrument for its owner Covista. Tenn. Code Ann. § 65-4-101(a) states in pertinent part:

"Public Utility" includes every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any ... telecommunications services ... affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof. Covista is the parent of Covista, Inc. and, as such, is a public utility. Upon completion of the transaction, Covista will become the owner of Capsule as well, effectively merging two public utilities.

2. The Authority has jurisdiction over the subject matter of the *Petition* pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-112.

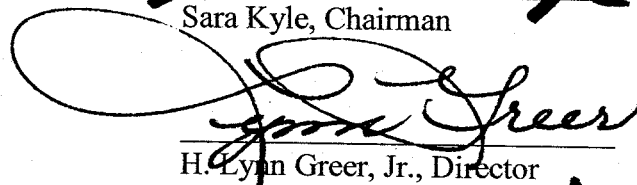
3. As a result of the proposed transaction described in the *Petition*, a merger will take place between Capsule and CCI Acquisitions Corp., a wholly-owned subsidiary of Covista that was created specifically for the purpose of conducting this transaction. Following the merger, Capsule will be the surviving entity and will be a wholly-owned subsidiary of Covista. Shareholders of Capsule will receive shares of Covista, or cash for partial shares. After the completion of the transaction, Capsule will be an affiliate of Covista's operating subsidiary, Covista, Inc.

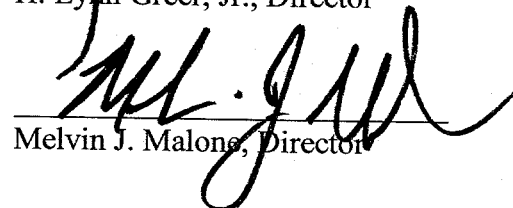
4. Approval of the merger pursuant to Tenn. Code Ann. § 65-4-112 is compatible with the public interest.

**IT IS THEREFORE ORDERED THAT:**

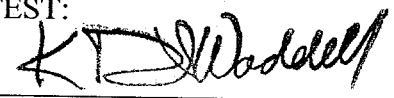
The *Petition* of Covista Communications, Inc. and Capsule Communications, Inc. for approval of a merger is granted.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary